

COURT OF COMMON PLEAS

Lorain County, Ohio

Natalie B. Neeson, Clerk

Case No. 86072-80

CHEMICAL RECOVERY SYSTEMS, INC.

vs.

ELYRIA CITY DEPARTMENT OF HEALTH, ET AL

SEPTEMBER 10, 1980

Filed

Journal Entry of settlement and dismissal filed.

Plaintiff to pay Court costs.

See Journal.

US EPA RECORDS CENTER REGION 5



461016

Paul J. Mikus Judge

and the following findings and orders are made.

The Court finds that Defendant William J. Brown, Attorney General, State of Ohio, has filed a notice with the Court indicating his election not to participate in this action. Therefore, Defendant William J. Brown, Attorney General, State of Ohio, is hereby dismissed as a party to this action without prejudice.

The Court further finds that, by agreement of the parties, all tags previously placed upon storage tanks as alleged in Paragraph 11 of Plaintiff's Complaint have been removed by Defendants and operation of said storage tanks has been resumed by Plaintiff with Defendants' consent.

7/9/80
Rec 7/10/80

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

CHEMICAL RECOVERY SYSTEMS, INC.,	:	CASE NO. 86072-80
Plaintiff,	:	JUDGE PAUL J. MIKUS
-vs-	:	
ELYRIA CITY DEPARTMENT OF	:	<u>JUDGMENT ENTRY</u>
HEALTH, ET AL.,	:	
Defendants.	:	

This cause came on for consideration by Paul J. Mikus, Judge, upon stipulations of the parties as herein set forth, and the following findings and orders are made.

The Court finds that Defendant William J. Brown, Attorney General, State of Ohio, has filed a notice with the Court indicating his election not to participate in this action. Therefore, Defendant William J. Brown, Attorney General, State of Ohio, is hereby dismissed as a party to this action without prejudice.

The Court further finds that, by agreement of the parties, all tags previously placed upon storage tanks as alleged in Paragraph 11 of Plaintiff's Complaint have been removed by Defendants and operation of said storage tanks has been resumed by Plaintiff with Defendants' consent.

The Court further finds that the parties have stipulated and agreed to the following:

1. The parties recognize that one of Defendants' primary concerns over the operation of Plaintiff at 142 Locust Street, Elyria, Ohio 44035, regards the number of drums being stored on the premises, the manner of storage of said drums and the contents of said drums, if any. Defendants recognize that the majority of the drums that are presently stored on the subject premises were stored there at the time said property was purchased by Plaintiff and had previously been stored there by Plaintiff's predecessor in title.

2. Defendants recognize that Plaintiff has made substantial efforts to reduce the number of drums containing material stored on the premises.

3. Plaintiff agrees to forthwith provide Defendants with an inventory of all drums (full, partially full, and/or empty) that are stored on the subject premises. Further, Plaintiff agrees to provide Defendants with an up-to-date drum inventory on or before the 10th day of each ensuing month, upon request by Defendants, unless and until complete depletion of drum inventory or demonstration by Plaintiff that drum storage complies with all Federal, State and Local Requirements.

4. Plaintiff further agrees that all bulk storage tanks and lines leading to and from such tanks will forthwith be tagged so as to provide proper information for firefighting. As the drums located on the premises are segregated into their

proper inventory categories each drum will be marked with indelible paint as to the contents thereof. Plaintiff projects completion of marking of drums on or before September 1, 1980.

5. Defendants recognize that, as a part of Plaintiff's "cleanup program" instituted in November of 1979, Plaintiff has moved from the subject property approximately 147,965 gallons of material, in excess of 2,600 drums and in excess of 8 loads of scrap metal, drums, rubbish and pallets.

6. Plaintiff has been making, and will continue to make, every effort to eliminate all drums, whether or not containing material, from the subject property. The following is a projected time table for the removal of drums:

- A. Effective immediately Plaintiff will not knowingly permit any additional drums to be delivered to the property unless such drums contain product for immediate resale or product that has value for immediate reclamation processing on the premises.
- B. After October 15, 1980, Plaintiff will not bring any additional product onto the property for reclamation and/or processing in any manner.
- C. On or before December 31, 1980, Plaintiff will have processed and/or recovered all recyclable solvent at its Elyria, Ohio facility.

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D. On or before May 31, 1981, all drums on the subject premises will either be removed or stored and identified in a manner that complies with all applicable Federal, State and Local Regulations.

7. During the course of the next twelve (12) months Plaintiff plans an orderly shutdown of its facility at 142 Locust Street, Elyria, Ohio 44035, or in the alternative, compliance thereat with all applicable Federal, State and Local Regulations. Total shutdown of all processing equipment is estimated to be on or before May 30, 1981. Due to the planned termination of activity at this facility Plaintiff does not foresee extensive expenditures to improve secondary containment. However, Plaintiff will maintain safety procedures at least at the present level. In order to accomplish the removal of drums from the premises pursuant to the aforestated timetable Plaintiff will be required to crush drums on the premises. Plaintiff will cause a concrete pad to be poured beneath its drum crushing apparatus in order to prevent leaching of any chemical materials into the soil.

8. Effective immediately the distilling apparatus located in the "Brighton Building" located on the westerly portion of the property adjacent to the river will not be used for production processing of any chemical materials; however, certain

equipment comprising said apparatus may be used for the purpose of drum cleaning or other activities necessary to accomplish the orderly shutdown and removal of materials from the subject premises set forth hereinabove.

9. All production processing of chemicals on the subject premises will hereafter take place in the Rodney-Hunt thin-film evaporator located in the easterly portion of the said property. The Federal Environmental Protection Agency has agreed to make certain recommendations regarding this equipment based upon information and data provided by Plaintiff and a field survey by the Federal EPA on June 2, 1980. Defendants recognize that operation of the Rodney-Hunt thin-film evaporator and associated apparatus, e.g. piping, pumps and tanks, is essential to the removal of the material from the premises and the eventual shutdown of operations as hereinabove set forth.

10. Defendants recognize that, in fixing the afore-stated time limitations, Plaintiff has exerted its best effort to impose upon itself time limitations which it can reasonably meet. In consideration thereof Plaintiff agrees to immediately notify Defendants upon its becoming aware that any of said time limits cannot be met. Defendants agree not to withhold reasonable extensions of any of the time limitations set forth herein upon notice by Plaintiff of its inability to meet any such time limitations for reasons beyond its control after having made good faith efforts to meet the said time limitations.

11. Defendants agree not to halt operation of any equipment upon the subject premises prior to May 31, 1981, absent demonstrable immediate danger to life, health or property.

12. Plaintiff agrees to permit Defendants or their agents reasonable access to the subject premises for purposes of inspection during their normal business hours upon reasonable notice by Defendants or their agents of their intention to inspect the premises. Defendants agree to make every effort not to inhibit or impede Plaintiff's production or activities necessary to the aforestated orderly shutdown of the operation and removal of materials from the premises.

13. In consideration of the foregoing the office of the Elyria City Solicitor, as counsel for the Defendants herein and as criminal prosecutor for the City of Elyria, agrees to dismiss, or cause to be dismissed, all criminal actions now pending in the Elyria Municipal Court against Plaintiff or James Freeman, its President, and arising as a result of alleged acts of omission or commission upon Plaintiff's premises at 142 Locust Street, Elyria, Ohio 44035.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that upon receipt of notice by the Court that the aforesaid criminal cases now pending in Elyria Municipal Court have been dismissed:

- A. Plaintiff's First Cause of Action for money damages allegedly incurred up to the date of journalization of this Entry be dismissed with prejudice.

B. Plaintiff's Second Cause of Action for declaratory relief, set forth in Section B of the prayer on page 8, et. seq. of the original Complaint herein, be dismissed as follows:

- i. without prejudice;
- ii. with prejudice;
- iii. without prejudice;
- iv. with prejudice;
- v. without prejudice.

C. Plaintiff's Third, Fourth and Fifth Causes of Action for injunctive relief be dismissed without prejudice.

D. Each party to pay its own attorney fees incurred to date herein and Plaintiff to pay court costs incurred to date in the within cause of action.

PAUL J. MIKUS, JUDGE

APPROVED:

CHEMICAL RECOVERY SYSTEMS, INC.,
Plaintiff

BY: _____
JAMES C. FREEMAN, President

DAVID C. LONG
Attorney for Plaintiff

JONATHAN E. ROSENBAUM
Attorney for Defendants